IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.528/01

Shashi Kumar & Anr.

Versus

State

DATE OF ORDER :: 17/09/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. V.R. Bajwa, for petitioners
Mr. Arun Sharma, Public Prosecutor for State

***

Instant petition has been filed by accused-petitioners assailing the order dated 1st May, 2001 whereby learned trial Judge framed charge against them u/ss.365 & 323 IPC.

Facts, which give rise for present controversy, are that a report came to be lodged at Police Station Duni on 26th June, 1996 at the instance of Kajod, brother of victim, in which it was alleged that on 26th June, 1996 at about 5.30 PM the victim went to Village Hanumanpura to join some function at sister's place. On the same day at about 4 PM, five persons came in Car bearing Registration No.DL4-CC/8788 and they inquired about his brother Ishwar Lal and it was stated by them that he drives their transport vehicle and when they were informed that he has gone to sister's Village Hanumanpura in order to show the Village, the informant along with one Badri Lal sat in their vehicle and took them to Village

Hanumanpura. While they were on their way, the occupants of the Car disclosed their identity which includes all the three accused Shashi Kumar, Suresh Kumar & Darshan Singh. Just after they proceeded a little ahead of Chainpura, the Car was stopped and persons namely; Badrilal and other two accompanied persons Praveen & Ghanshyam also got down from the Car and they reached Hanumanpura at about 5.30 PM. Upon reaching Village, the informant went to get his brother and informed him that persons came from Delhi, are looking for him. When Ishwar Lal came to the vehicle, they forcibly got him inside the Car and all of them drove away. On the way back to Delhi, they intended to take him Delhi with them and one of the occupant of the vehicle particularly Shashi Kumar gave punches on the face of Ishwar Lal. On informant's raising alarm, immediately rushed to Police Station Ghad and revealed the entire story. The Police personnel flashed wireless message in order to intercept the vehicle and after sometime information was received from Police Station Nagar that Car has been intercepted and the occupants have been nabbed. But, since the incident pertains to Hanumanpura, the report was to be lodged at Police Station Duni. On the basis of said report, FIR No.119/96 was registered at Police Station Duni for offences punishable u/ss.147, 364, 365, 323 & 149 IPC. The investigating agency recorded statements during investigation of victim, complainant, informant and so also of few other

persons u/s.161 Cr.P.C. and after doing the needful, the charge sheet was filed against accused-petitioners for offence punishable u/ss.365 & 323 IPC. It is to be mentioned at this stage that charge sheet was also filed against one Darshan Singh though under his absconsion and against two other co-accused persons namely; Praveen & Ghanshyam, a negative report u/s.169 Cr.P.C. was filed by the Investigating Agency. Final Report so far as co-accused are concerned, was accepted by the Court of Magistrate and against present accused-petitioners vide order dated 1st May, 2001 framed charges for offence punishable u/ss.365 & 323 IPC against Shashi Kumar and for offence u/s.365 IPC against Suresh Kumar. The victim Ishwar Lal in his statement u/s.161 Cr.P.C. specifically stated that he was forcibly taken into vehicle with them and while he was on way to Delhi, one of the accused Shashi Kumar gave him punches and if the vehicle would not have been intercepted they could have either forcibly taken him to Delhi or killed him. Even before learned trial Judge at the stage of framing charge, the petitioners tried to make out a distinction that the offence u/s.365 IPC is not made out and even from the contents of FIR and so also the statements recorded u/s.161 Cr.P.C. if at all taken at its face value at the best it will fall u/s.346 which does not find favour before learned trial Judge and after rejecting their objection, charge was finally framed against them u/s.365 & 323 IPC.

Counsel for petitioners tried to make out distinction that from contents of FIR and so also the statement recorded, the charge u/s.365 IPC against accused-petitioners is not made out and in support of his submission, counsel placed reliance on the judgment of this court in **Gopa Ram Vs. State of Rajasthan [1996 Crl.L.J.2987]**.

Learned Public Prosecutor has supported the order and submits that sufficient material is available for framing charge against accused-petitioners and detail order has been passed by learned trial Judge giving cogent reasons and what has been submitted by counsel can be considered in defence at the stage of trial. On the basis of prima facie material, no error has been committed by learned trial Judge in framing charge against accused-petitioners.

This Court has gone through the order of learned trial Judge and has also looked into the contents of FIR and the statement recorded u/s.161 Cr.P.C., particularly of Ishwar Lal & Kajod which show about their intention to take him Delhi in wrongful confinement as he was forcibly seated in the Car for their way to Delhi or at some other place, but since wireless message was sent by the Police Authorities, the vehicle was intercepted and they were not able to finally carry out their intention, but what has been argued by counsel can be his defence, but this court is of the opinion that same cannot be

looked into at the stage of framing charge and the material which came on record, this court does not find any error committed by learned trial Judge in framing charge against accused-petitioners u/ss.365 & 323 IPC.

Judgment in **Gopa Ram Vs. State of Rajasthan** [supra] is of no assistance to him for the reason that it was a case where one was convicted u/s.362 IPC and argument was that it is not substantive offence, as such cannot be punished u/s.362 IPC. Whereas in the present case, he has been charged u/s.365 IPC and it is a substantive punishment which can be inflicted on the accused if he is finally held guilty.

Consequently, this court does not find any merit in the misc. petition, the same is, accordingly, dismissed. Record be sent back immediately to trial court, who is directed to proceed with the matter expeditiously in accordance with law.

[AJAY RASTOGI],J.